acted upon the faith that that authority continued. I am unable to accept Mr. O'Connor's submission. There is no evidence, and indeed the evidence points the other way, that Kie Hock Shipping Co. (Pte) Ltd. carried on business or acted in any way as agents or managers of the defendant company after 1st January 1971.

On the submission that the defendant company, having regard to all the facts and circumstances, can be said to be resident in Singapore at the time the writ was served in October 1972 I find on all the evidence before me that the defendant company were not at that date carrying on business in Singapore.

The appeal is dismissed with costs.

*Appeal dismissed.*

Solicitors: *Drew & Napier; Donaldson & Burkinshaw.*

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## TAN TECK WA v. PUBLIC PROSECUTOR

**[A.Cr.J. (Wee Chong Jin C.J.) May 2, 1973]**

**[Singapore — Magistrate's Appeal No. 108 of 1972]**

*Road Traffic — Minibus used as public service vehicle contrary to licence granted and conditions attached — Conviction and forfeiture — No written public service vehicle licence — Road Traffic Act (Cap. 92), s. 53.*

This was an appeal against a conviction under section 53 of the Road Traffic Act (Cap. 92) for using a motor vehicle (a minibus) as a public service vehicle otherwise than in accordance with the licence granted in respect of that vehicle and the conditions attached thereto. An order of forfeiture was also made in respect of that vehicle. The appellant appealed against the conviction and the order of forfeiture. The main ground of appeal was that the prosecution had failed to prove that the Registrar of Vehicles, had issued a written public service vehicle licence under the Road Traffic Act in respect of the appellant's vehicle.

**Held,** dismissing the appeal: (1) on the facts there could be no doubt that the appellant's minibus had been duly granted a licence authorising its use as a private car (school transport) and the appellant had used his minibus otherwise than in accordance with such licence;

(2) where a person is charged with having contravened section 53(1) by reason of his use of a motor vehicle as a public service vehicle otherwise than in accordance with the licence granted in respect of that vehicle there is no necessity for the prosecution to prove the existence of a written licence issued by the Registrar of Vehicles for the use of that vehicle as a public service vehicle.

MAGISTRATE'S APPEAL.

*L. M. Ong* for the appellant.

*Chia Quee Khee* (Deputy Public Prosecutor) for the respondent.

**Wee Chong Jin C.J.:** The appellant was charged and convicted under section 53 of the Road Traffic Act (Cap. 92) of using a motor vehicle as a public service vehicle otherwise than in accordance with the licence granted in respect of that vehicle and the conditions attached thereto. An order of forfeiture was also made in respect of that vehicle. He now appeals against the conviction and the order of forfeiture.

The brief facts are as follows. Motor vehicle No. SCB. 200 is a minibus of which the appellant is the registered owner. He applied for and was granted by the Registrar of Vehicles, who is the appropriate licensing authority, a licence for the use of his motor vehicle as a private car (school transport) *i.e.* for carrying children to and from schools at a fixed or agreed sum. The appellant's said minibus is thus a public service vehicle duly licensed as a "private car (school transport)".

On 6th October 1970 the appellant was stopped by three Traffic Police officers at Nicoll Highway while driving his minibus which had eight passengers in it. At least three of the passengers were paying passengers and they were not school children but were adults. On these facts the appellant, who offered no defence when called on to enter upon his defence, was convicted and an order of forfeiture was made by the trial court.

Section 53(1) of the Road Traffic Act prohibits, *inter alia,* the use of a public service vehicle otherwise than in accordance with the licence granted under Part II of the Act authorising such use and section 53(2) makes it an offence under the Act and provides the penalty for any contravention of section 53(1). Section 53(6) requires a court on the written application by the Public Prosecutor to make an order for forfeiture of a motor vehicle duly seized if it is proved to the satisfaction of the court that it has been used for the commission of an offence under section 53.

The main ground of appeal is that the prosecution had failed to prove that the Registrar of Vehicles had issued a public service vehicle licence under the Road Traffic Act in respect of the appellant's vehicle. The submission is that on the prosecution evidence no such licence was in fact issued because it is the prosecution case that the appellant's application for a licence to use his vehicle as a "private car (school transport)", *i.e.* a section 52(1)(g) public service vehicle, was approved orally and no written licence was ever issued. However, the evidence that the appellant made a written application for such a public vehicle licence and was granted such a licence by the Registrar of Vehicles was not challenged. In my judgment, this ground is without substance. On the facts there can be no doubt that the appellant's minibus had been duly granted a licence authorising its use as a "private car (school transport)" and the appellant had on the 6th October 1970 used his minibus otherwise than in accordance with such licence. Where a person is charged with having contravened section 53(1) by reason of his use of a motor vehicle as a public service vehicle otherwise than in accordance with the licence granted in respect of that vehicle there is no necessity for the prosecution to prove the existence of a written licence issued by the Registrar of Vehicles for the use of that vehicle as a public service vehicle. It is of course necessary to prove, *inter alia,* a grant in respect of that motor vehicle of a licence for its use as a public service vehicle. Accordingly, the appeal against his conviction is dismissed. It follows,

in my judgment, that the order of forfeiture, there being a written application by the Public Prosecutor, was properly made.

*Appeal dismissed.*

Solicitors: *L. M. Ong & Co.*

# MALAYSIAN REPORTS

## YEAP CHENG HOCK v. KAJIMA-TAISEI JOINT VENTURE

**[Q.C.J. (Syed Agil Barakbah J.) October 10, 1971]**

**[Alor Star — Civil Suit No. 70 of 1968]**

*Negligence — Occupier's liability — Licensee — Duty of occupier — Negligence in putting machinery into operation when visitors were present — Quantum of damages — Loss of future earnings — Geologist — Amputation of leg — Special damages — To be proved by plaintiff.*

*Damages — Leg — Amputation of — Loss of future earnings.*

The plaintiff was a geologist working with a mining company. The defendants were contractors carrying out tunnelling operations in Kedah. The plaintiff was one of a party of the Geological Society of Malaysia visiting a tunnel which was being constructed by the defendants. The visit was for the purpose of geological survey and examination of rocks. They were led into the tunnel by the defendants' servants. While they were inspecting some rocks, certain machinery under the control and management of the defendants began to operate without any warning. The plaintiff and his party in their fright and excitement attempted to evacuate to a place of safety. In doing so the plaintiff's leg was crushed by machinery in the tunnel and later had to be amputated. The plaintiff brought an action for damages against the defendants for the injuries sustained by him due to the alleged negligence of the defendants, their agents or servants. After the accident, the plaintiff's employer did not terminate his employment but allowed him to carry on his former duties as geologist with the same salary as before. It was agreed by both parties that should the court find the defendants to be solely negligent a sum of $32,500 should be awarded to the plaintiff as general damages for pain and suffering and loss of amenities.

**Held:** (1) the plaintiff was a licensee and therefore the defendants were bound not to create a trap or to allow a concealed danger to exist upon the premises, which was not apparent to the plaintiff as a visitor, but which was known or ought to be known to the defendants;

(2) on the facts and circumstances of this case there was evidence to show that the defendants were negligent as they did not warn the plaintiff of the dangers which were known to them and the defendants, their servants or agents were negligent in putting into operation the machinery in the tunnel when the plaintiff and the other visitors were present;

(3) although the plaintiff had been allowed to continue in his former job, his promotional prospects would be affected and, if he was retrenched, he would find it difficult to get a job with another company. In the circumstances the sum of $40,470.00 would be fair and reasonable for loss of future earnings.

*Cases referred to:-*

(1) *Latham* v. *Johnson* [1913] 1 K.B. 398, 410.

(2) *Mersey Docks and Harbour Board* v. *Proctor* [1923] A.C. 253.

(3) *Robert Addie & Sons (Collieries)* v. *Dumbreck* [1929] A.C. 358, 365.

(4) *Hawkins* v. *Coulsdon & Parley Urban District Council* [1954] 1 Q.B. 319.

(5) *Pearson* v. *Lambeth Borough Council* [1950] 2 K.B. 353, 364.

(6) *Donoghue* v. *Stevenson* [1932] All E.R. Rep. 1.

(7) *Le Lievre & Anor.* v. *Gould* [1893] 1 Q.B. 491.

(8) *British Transport Commission* v. *Gourley* [1956] A.C. 185.

(9) *Sum Kum* v. *Devaki Nair & Anor.* [1964] M.L.J. 74, 75.

(10) *Khoo See Moi* v. *Tay Teik Cheng* [1970] 2 M.L.J. 249, 250.